REMARKS:

The claims in the application are 1-33 and claim 34 has been added by the present amendment.

Favorable reconsideration of the application as amended is respectfully requested.

Claims 1-4 and 30-33 have been amended to eliminate the objection, raised at page 2 of the Final Office Action. Claim 34 introduced herein finds support, throughout the specification and the figures, and in particular at pages 6-10. The amendments to claim 1 also finds support in these pages. No new matter has been added.

The Applicants respectfully note that this Final Office Action was mailed as a result of an Amendment After Final Action filed with a Request for Continued Examination (RCE) on June 13, 2005. The amendment filed with the RCE amended claims 1-4, 6, 8, 9, 11 and 18 and introduced new dependent claims 27-33 for the first time. These new claims were added without canceling a corresponding number of finally-rejected claims, as required by 37 C.F.R. §1.116.

As a result, the Examiner issued the current Office Action as a first final Office Action after filing of the RCE even though additional claims were added to the application. In the current Office Action, objections to language in previously -presented claims 1-4 were raised, for the first time, on page 2. Previously-presented claims 2-32 were also rejected, for the first time, under 35 U.S.C. §112, first paragraph, on page 3 of the Office Action. There is no statement in this Office Action that newly-added claims 27-33 have been even treated over the art.

A telephone call was made to the Examiner requesting that finality of the current Office Action be withdrawn. It was pointed out that new claims 27-33 were introduced, for the first time and no action on their merits before this final action had been taken in this case. The Examiner recommended that a Petition be prepared and filed to set forth applicants' position in detail. Accordingly, a Petition to correct and withdraw finality of the Office Action as premature was filed on February 22, 2006 and as of the date of this filing (as far as can be determined by the Applicants) the Petition has not yet been decided.

As pointed out in the Petition, in accordance with M.P.E.P. §706.07(h)VIII., the first Office Action immediately subsequent to filing an RCE may be made final only if the conditions set forth in M.P.E.P. §706.07(b) for making a first action final in a continuation application are met. According to M.P.E.P. §706.07(b), all claims presented for examination must be drawn to the same invention claimed in the earlier application, to make the first Office Action final. Here, the claims introduced for the first time in the Amendment After Final Action filed with the RCE on June 13, 2005 were dependent from claims and limitations to the independent claims from which they depend were presented.

Accordingly, these claims are not all directed to the same invention as previously-presented. Furthermore, as pointed out in the Petition and *supra*, the total number of claims has been increased by the June 13, 2005 amendment, without canceling a corresponding number of finally-rejected claims. Furthermore, new rejections against previously-presented claims have been raised for the first time in the Office action, while it does not appear newly-added claims 27-33 have been treated over the prior art. It is respectfully pointed out Applicants are not challenging the right of the Examiner to reject the pending claims for any reason or over any combination of prior art. Rather, Applicants

are simply pointing out the first Office Action after filing the RCE in the present instance should be non-final, to allow Applicants full opportunity to address the rejections raised against the presented claims.

Accordingly, for these reasons, the Applicants respectfully requested in the Petition that the finality of the Office Action mailed October 19, 2005 by the Patent and Trademark Office in the above-identified application be withdrawn as premature, and a corrected non-final Office Action treating all pending claims 1-33 fully on the merits be issued, with the response period reset.

In view of the fact that a decision on the Petition filed February 22, 2006 has not yet been made by the U.S. Patent and Trademark Office, the Applicants are filing the current response to the office action mailed October 19, 2005, as an Amendment After Final Action with an RCE and a petition for a three-month extension of time. The Applicants fully intend to request a refund of the fee for filing the Petition, RCE and the three-month extension of time when and if the U.S. Patent and Trademark Office issues a decision on the Petition removing finality of the pending office action and/or resetting the time to respond.

At the very least, the Applicants respectfully note that by way of this amendment, claim 1 has been amended and new claim 34 has been added to this application. Therefore, should the Examiner determine that a new Office Action should be issued, the Applicants respectfully assert that this action should not be made final. The Applicants now address the outstanding rejections set forth in the Office Action mailed October 19, 2006.

Claim 1 has been rejected under 35 U.S.C. §112, first paragraph, at the top of page 1 of the Final Office Action, as allegedly failing to comply with the written description

requirement. Additionally, all Claims 1-26 have been rejected under 35 U.S.C. §103(a) as obvious over U.S. Pat. No. 4,511,229 to Schwartz et al in view of U.S. Pat. No. 4,977, 521 to Kaplan on pages 3-7 of the Final Office Action. To address both these rejections, the Applicants refer to the unsigned copy of the Declaration submitted in the response filed June 13, 2005 and assure the Examiner that the inventor, Franz Josef Gassmann has been contacted and is in the process of executing the Declaration. For the Examiner's convenience, a copy of the un-executed Declaration is attached herewith and the executed Declaration will be forwarded to the Patent and Trademark Office as soon as it is received.

The features and advantages provided by the presently claimed invention are described in paragraphs 3-8 of the enclosed Declaration. More specifically, the present invention reduces errors caused by aging and temperature dependence of film. This is accomplished by creating and recording one or more white light spots or signals at the time a picture is taken. This recorded light signal has nothing to do with source light illuminating a scene being photographed (paragraph 7 of the enclosed Declaration).

The rejection of Claim 1 under 35 U.S.C. §112, first paragraph, is explicitly addressed in paragraphs 9-12 of the enclosed Declaration. As stated in paragraph 9 of the Declaration, the first paragraph on page 4 of the specification explicitly states the media generate a light signal with known spectral intensity distribution or chromaticity coordinates and recorded on the recording medium in the camera to create a reference signal by which the recording is calibrated. Compensating aging and temperature differential is also described on pages 2-3 of the specification (paragraph 10 of the Declaration). Additionally, it is stated on page 6 of the specification that during development of film, the spectral range is only exposed until the white light spot is appropriately white.

Therefore, it is stated by Mr. Gassmann in paragraph 11 of his Declaration, the exposure process described on page 6 of the specification only makes sense if the reference signal is recorded at the same time a picture is taken. Accordingly, Mr. Gassmann concludes, in paragraph 12 of his Declaration, the disclosure found in the present application clearly teaches one skilled in the art that reliable reproduction of color or brightness information can only be attained if the reference signal, i.e., one or more white light spots, is taken at the same time a picture is taken.

The combination of Schwartz et al with Kaplan is addressed in paragraphs 13-20 of the enclosed Declaration. As stated in paragraph 13, Schwartz et al fail to show or suggest application of media creating one or more white light spots. Schwartz et al disclose three filters, with light passing by fiber optic bundles to the film margin after passing the filters. Such arrangement is unreliable because the filters might differ in quality, light distribution the filters might not be uniform and the fiber bundles might not possess equal length. Furthermore, it is impossible to use a film possessing more than three layers in such apparatus which is directed to recording parameters describing illuminating conditions. In contrast, the presently claimed invention operates independently of illumination conditions. Neither Schwartz et al nor Kaplan teach provide a light source in the camera that is independent of the illumination of the object and/or scene being photographed.

Furthermore, as pointed out in paragraphs 14 and 15 of the enclosed Declaration, the present invention functions independently from the illuminating conditions which must be recorded in Schwartz et al every time such conditions change. If such conditions remain constant, then there is no need for a photographer to further record any parameters. Accordingly, Schwartz et al is unsuitable for detecting or compensating for

aging of photographic film. Kaplan fails to remedy the deficiencies in Schwartz et al for the reasons addressed in paragraphs 16-19 of the enclosed Declaration.

More particularly, Kaplan is directed to reducing noise in photographic emulsions and has nothing to do with compensating declining sensitivity of film. As explicitly stated in paragraph 16 of the Declaration, there is no suggestion in Kaplan of recording a white light spot at the same time a picture is taken. It is pointed out by Mr. Gassmann, column 5, line 66- column 6, line 11 of Kaplan teach exposing one from by the film development laboratory or during manufacture, but not by the photographer at the time a picture is taken.

Furthermore, Kaplan is explicitly directed to utilizing negative color dye Dn and positive color dye Dp to reduce noise, requiring complicated, expensive equipment. Thus, Kaplan is only concerned with noise formation and fails to contemplate aging effect of the film. It is concluded by Mr. Gassmann in paragraphs 18 and 19 of his Declaration, there is no logical reason to relate collecting illuminating conditions (Schwartz et al) with noise reduction (Kaplan). Schwartz et al cannot be used to further reduce noise, while Kaplan cannot be used to enhance retrieval of illumination information of the object and/or scene being photographed.

In fact, using the apparatus of Schwartz et al to determine specific histogram functions of a film would destroy the noise reduction effect of Kaplan. This is described in paragraph 19 of the Declaration, where exposing the film to the exposure level gray scale mask illuminated by the source light illuminating a scene will result in varying histogram functions unsuitable for noise reduction. Accordingly, Mr. Gassmann concludes, in paragraph 20 of his Declaration, even if he could logically consider and combine the teachings of Schwartz et al and Kaplan, such a combination of different methods and

systems would fail to provide an enhanced system or method for solving time-dependent aging of film.

Concerning the amendment to independent Claim 1 and new independent Claim 34 introduced herein, it is further pointed out that neither Schwartz et al nor Kaplan teach or suggest a recording device for recording an image that creates light spots that are independent of the illumination conditions of an object from which the image is taken in order to correct for the aging of the photographic film. More particularly, Schwartz et al fail to disclose providing a light source within the camera which generates a light signal independent of the illumination conditions of the particular scene. Schwartz et al rather teach the opposite, namely collecting a sample of light form the illuminating source and recording a color sample after passing the slight through a series of filters. Nothing in Schwartz et al teaches or suggests providing a light source in the camera which, in turn, provides a light signal independent of the light of the scene.

Kaplan is directed to reducing noise in photographic emulsions and teaches exposing the film to several calibration strips in the development laboratory. There is no teaching or suggestion in Kaplan of recording white light spots on the film at the time a picture is taken. Only by recording white light spots on the film at the time a picture is taken (as in the presently claimed invention), is it possible to compensate for declining sensitivity or other alteration in the film over time. For this reason alone the rejection of claims 1-33 should be reconsidered and withdrawn.

The remaining art of record has not been applied against the claims and will not be commented upon further at this time. A second supplemental Information Disclosure Statement is being simultaneously filed herewith.

Accordingly, in view of the forgoing amendment and accompanying remarks, it is respectfully submitted all claims pending herein are in condition for allowance. Please contact the undersigned attorney should there be any questions. A petition for an automatic three month extension of time for response under 37 C.F.R. §1.136(a) is enclosed in triplicate together with the requisite petition fee, fee for the additional claims introduced herein and RCE fee.

Early favorable action is earnestly solicited.

Respectfully submitted,

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